



# Non Standard, Precarious Employment and Constraints to Collective action: Reinventing union power

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## 1. Introduction

In the last three decades, popular notion of employment relationship has changed considerably. This change has paralleled the shift in the field of industrial and employment relations from the 'language of rights' to the 'language of flexibility'. For fifty years or so after the Second World War (often described as the golden age of the welfare state), the general idea of employment relationship involved a single, consistent and prototypical identity. That identity consisted in the view of the worker as someone with mutually beneficial, long-term attachment to an employer. Within this arrangement, workers enjoyed employment security, benefits, training, and sometimes career mobility. Employers in turn invested in workers' goodwill and on-the-job training with expectations in the form of greater productivity and higher returns for the organisation (Carre *et al.*, 2000).

There is little doubt that newer forms of employment relationship, significantly different from the model earlier referred to, have emerged in recent times, and have been the subject of debate in academic, administrative, activist and policy circles. The diversity in views on this subject is fore-grounded in the multiplicity of terms and usage currently employed to characterise emerging forms of employment relationship: Non-standard, flexible, market-mediated, contingent, marginal, atypical, and secondary are some of the terms more commonly used to describe emerging employment relationships.

While there exists the smaller debate about whether or not anything has changed about employment relationships; the real debate appears to be about the extent to which emerging forms of employment have compromised labour regulation and unduly exposed the worker to inferior labour standards. Attention should also be on which systems and institutions are needed in order to better protect the worker.

To understand the major drivers behind the emerging forms of employment relationships, one would need to reflect on the fact of their pervasiveness. The structure of the global economy, its contracting and integrating tendencies, in addition to its demands for competitiveness and, by extension, certain ways of organising work (i.e. the labour process) has definitely been a major influence behind emerging forms of employment relationships. This phenomenon and its correlates are described as globalization.

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It is pertinent to note that when we speak of globalization generally, people begin to conjure the images of revolutions in the field of information and communication technology which naturally leaves one with a very sanguine estimation of globalization. However, the discourse on globalization and the implications for labour is usually more nuanced and critical, verging on the relative deprivation of labour as well as resultant deficits in labour standards within the new economic order. It needs to be stated here that the emphasis must be on remedial measures.

## 2. Conceptualizing Non Standard Employment and Precarious Work

The point must be made that non-standard forms of employment relationship are atypical in nature. Essentially, they are those jobs that are not permanent and fulltime; conducted in irregular workplaces or sites; and jobs, which do not involve a clear or direct employer. These jobs create forms of instability and vulnerability in varying dimensions. In looking at the instability and vulnerability of workers under these types of employment situation, the focus should be on deficits with respect to: (1) Tenure, (2) Wage Stability, (3) Opportunities for career advancement and (4) Availability of company-supported social protection such as health and pensions (Bernhardt and Marcotte, 2000).

Although most atypical forms of employments share board characteristic; there are fundamental differences bordering on employer orchestration or otherwise. There is one scenario whereby the employer is the one clearly driving the process either as a result of the pressure of the global economy and the need to adopt global business models which focus on flexibility and temporary employment, in order to remain competitive. This results in arrangements such as outsourcing, contracting, part-time and agency work. This is referred to as precarisation from above (Theron, 2011).

There is a second possibility in which an employee is pushed off from the formal sector of the economy as a result of inability to withstand intense (and many times unfair) competition, and individual workers are forced to seek alternative sources of livelihood in the underground economy. This latter development is regarded as precarisation from below (Theron, 2011). The outcomes of this latter process are seen in the form of street vendors, hawkers, domestic workers, taxi drivers, artisans, etc. These latter examples of occupations are the categories more classically referred to as informal workers. These groups are often associated with complex and diverse livelihood sources and present particular challenge when it comes to organizing, making collective demands and accessing rights. Importantly, because the informal workers often have no clearly defined employer in comparison to standard employment relationships, their demands are usually directed at the state.

## 3. Globalization: Contextualizing Increasing Informalization and Precarization

Globalization is a phenomenon which is being pervasively experienced. In organic terms, it is associated with structural changes which are impacting on production and distribution processes in the global economy. For the world of work, it has led to profound outcomes, including changes in the organisation of work, in the form of tendencies toward flatter hierarchies and growing informalization (ILO, 2001). Increasing informalization has become a major marker of globalization, and has tended to escalate the challenge of precarious work.

Informal work is economically productive activity that is unregistered, and unreported, where secure contracts and protection under employment laws are either minimal or absent. Often, informal workers are denied workplace benefits and social protection such as pension, healthcare and training which ordinarily exist in formal employment (Aspen, Field, 2004). Informal workers includes worker who are self-employed (or are themselves employers) in unregistered enterprises, and workers who are employed in informal, unreported jobs.

In contradiction of earlier estimations of ultimate shrinking, the informal economy is growing globally. The ILO reports that the bulk of all new job growth in the developing world is the informal economy. It also reports that the informal economy is a necessary survival outlet for workers in countries that lack social safety nets or where wages or pension benefits are low. The influence of the global economy, particularly its business models that focus on flexible and temporary employment relationships is a contributory factor to the growth of informal work.

One area that has engaged scholars, activists and development institutions are the issues of relative deprivation of informal workers when it comes to power and access to social facilities and rights. These deficits, to a great extent, explain the precarious circumstance of most informal workers. For instance, it should explain why wages and labour standards are relatively lower in the informal sector since it is difficult to single out an employer to negotiate with. The high number of unemployed does not help to mitigate the situation as more and more persons are being pushed into informal employment thereby imploding the challenge.

In terms of tracing the origins and growth of the informal sector, Chen (2004), outlines three of the basic approaches:

- i. *The Dualist School Approach*, which speaks of traditional and modern streams within a developing economy. It assumes that, with development and rising per capita incomes, the informal sector would disappear, particularly insofar as these entities were considered to be peripheral to capitalist production systems.
- ii. *The Legalist School Approach*. This approach assumes that informal sector is comprised of entrepreneurs who want to avoid the costs and hassles associated with formalisation, particularly in respect of registration and taxation. This view tends to criminalise the informal sector.
- iii. *The Structuralist Approach* which considers the informal sector as a part a continuum within the market, albeit located in a subordinate position. This view sees complementary relationship between the formal and informal sector of the economy.

#### **4. Implications of a Changed Institutional Context for the Social Partners and Governance of Labour Relations**

The process of globalisation and attendant informalisation is vastly impacting on the very foundations of industrial and labour relations, at least as we used to know it. Classically, industrial relations foundation was always anchored on the principles tripartism or joint action by the social partners - Government, Employer and Labour. Under the regime of globalization, this situation may be in flux. One immediate consequence is the growing tendency towards unilateralism. The roles of the individual partners have also been tempered by globalization.

At the heart of the challenge of fostering an effective (and agreeable) procedure for the governance of labour relations is clearly the asymmetry that now exists in power relations between the major institutional actors and interests- labour and capital (Burke and Epstein, 2001). Under the regime of globalisation, production and labour markets have altered considerably. These markets are now organised on a global scale, thereby mitigating the moderating effect that national governments and many unions, who themselves exist mainly as national entities, had with respect to labour relation systems. To be sure, this has resulted in considerable loss of power for unions and the strengthening of the position of private capital and/or transnational corporations in terms of the disciplines of labour relations.

In this period of ascendancy of transnational corporations, trade unions have lost many of their hard-won regulatory instruments within national boundaries and literally struggled to increase their political and organisation capacity to impact on the governance of labour relations, internationally. The production models adopted by private capital (or business) have ensured that more and more workers have been pushed into informal employment arrangements and other non-standard employment forms. Meanwhile, the trade unions, with their business models which are more adept to formal sectors of the economy, appear to be bearing the brunt of this process of reconfiguration of power.

There is perhaps nowhere that this gap in the regulation of labour relations is more obvious than on the issue of precarious workers and social protection. Social protection has to do with preventing or mitigating deprivations in the form of income, consumption and rights as well as shielding members of society from various contingencies (Tostensen, 2008). This makes social protection deeply connected with employment and labour standards. The provision of social protection involves institutional arrangements and actors, with clear cut governance systems. More formal undertakings involve the state acting directly as a provider or as a regulator of the organized private market. This regulatory role involves the setting and the *enforcement* of minimum standard.

The enforcement of labour standards and by implication their effectiveness revolves around the principle underlying the prevailing 'enforcement regimes'. Enforcement regimes are structured around principles of either *compliance* or *cooperation*. These principles are easily expressly in dominant instruments within the practice, including legislation for the former and economic incentives for the latter. Civil society and family arrangements by contrast, rely on mutual interests and social norms respectively. The issue of incentive structure is today assuming a more controversial status with arguments and counter arguments in respect of methods of achieving compliance.

That precarious work is a key global challenge today is a statement backed by statistics. Ginneken (2003) notes that more than half of the world's population is excluded from any type of statutory social protection. The percentage of those excluded rises to ninety in the case of sub-Saharan Africa and South Asia. He further notes that only twenty percent of persons world-wide enjoy adequate social protection. Since the 1980s the state of social protection in developing countries has been a major source of debate mainly because of its very low levels in comparison with developed countries, but also because of the internal differences that exist within these countries, with respect to their formal and informal sectors (Guhan, 1994).

Social protection concerns are also being currently raised in developed countries in relation to increasing incidence of precarious work and after decades of fairly generous attainments in this area. These concerns exist at two levels: The first has to do with an extensive product and labour model that is tending to increase precarious work and

complicate the social protection challenge- euphemistically referred to as ‘race to the bottom’. The second concern arises from increasing practice of governments to cut social spending and privatise social services in line with market rationality, which Wahl (2001:8) refers to as an “attack on the welfare state.” These issues speak to the governance of labour relations on an international scale.

It is important to point out that other important actors in employment relations are now emerging on the scene. These actors include non-governmental organisations, pressure groups, the media, and social movements. The activities of these groups are having implications for the main social partners. The overarching influence on the changing institutional context is globalization. Under the regime of globalization, the consequences for the social partners are quite significant:

*A. For Government, It has lead to:*

- i. Redefinition of the role of government as an industrial relations partner. Government’s role is increasingly conceived in narrower, less direct and restrictive terms to that of facilitator and regulator. This process is further reinforced by government’s de-investment in public enterprises.
- ii. Erosion of power or influence of government in comparison to private capital in terms of employment relationship processes and outcomes. Increasingly employers, especially multinational corporations, have expanded their sphere of influence in relation to the other social partners.
- iii. Complication of the regulatory function as a result of private capital’s capacity to coordinate production and distribution chains beyond national borders and reach, as in the case of large sections of the informal economy. This simply means that in spite of government’s good intentions and political will, the regulatory function is much more difficult to accomplish.

*B. For Employers, it is bringing about:*

- i. Heightened pressure on organisations as a result of the challenge of ensuring competitiveness and the endless search for opportunities to secure edge over competitors. Frequently, it leads to a situation where companies seek ways of cutting social costs.
- ii. Tendency for altercation with workers and their representatives as a result of some of the disciplines related to the organisation of work especially alleged anti-worker, policies and human resource management practices. Where industrial action is not immediately the case, a more or less war of attrition between employer and workers is increasingly becoming the dominant tendency evident.
- iii. Increased suspicion and agitation from host communities and the general public arising from a feeling of marginalization and/or exploitation by companies and businesses, with many regarding gestures of corporate social responsibility as doing too little or mere tokenism.

*C. For Trade Unions, the development has been associated with:*

- i. Declining membership size owing to restructuring processes, which lead to growing loss of jobs within the formal economy or disguised employment in the informal economy.

- ii. Difficulty of organising informal sector workers and increasing membership as a result of the inability of many unions to adopt innovative organising models which are suitable for the informal sector rather than existing models which are more appropriate for industrial or formal settings.
- iii. Seeming Employer (and Government) hostility arising from a perception that union activities constitute a source of labour market rigidity and an obstacle to company profitability and national economic progress. This reflex is easily discerned in the thrust of many institutional reforms.
- iv. Decreasing capacity of trade unions for collective action mainly as a result of a growing inability to rely on mobilization as means to advancing its position within the logic of interest aggregation.

## 5. Trade Union Response to Challenges of Collective Action

In the last section, we already alluded to the fact that a significant source of power for trade unions over the years was embedded in its structural location and organizational capacity. Essentially, this had to do with its mobilizing and coordinating abilities in pursuit of collective action. This power was critical as a bargaining repertoire and in underscoring labour's claims of representing workers. The institutional context within which this logic prevailed has altered substantially: production procedures have changed; labour markets have become more flexible; non standard jobs and employment relationships have increased; and a more diverse workforce has emerged. These factors have complicated the work of trade unions, largely rendering their traditional business models ineffective.

Against the backdrop described above, the labour movement has had to struggle to make its case of still being relevant. A pessimistic reading of this development suggests that trade unions have generally become weaker, as union densities have declined alongside the reorganization of production and the fragmentation of labour, globally. It further suggests that claims around trade unions' 'representativeness' of workers have become less valid, given a new momentum to the diversity of the latter. Further, it argues that with revisions in unions' traditional spheres of influence and declining bargaining power in relation to employers their influence in industrial relations and social policy making has also receded.

In spite of the pessimistic picture painted in foregoing section, it is plausible to argue differently: for while interest representation and collective action on the part of labour may have become more challenging in the evolving institutional context, making trade unions seemingly unable to intervene in the face exposure of workers to adverse situations such as precarious employment; this has not as such obviated the capacity of labour to influence labour relations. What is important is for trade unions to understand their capacities and how to leverage this. Trade unions have certain inherent capacities, and they include:

- i. Mobilizing and coordinating capacity, which could be very decisive in terms of organizing human resources, and deploying them to productive and development uses.
- ii. Networking capacity, especially with non-governmental and community groups, with the possibility of ensuring commitment of a broad spectrum of interests and stakeholders to a development framework or progressive cause.

- iii. Integrating capacity, involving the integration and articulation of interests, and the representation of same in an institutional sense. This has practical usefulness when it comes to the legitimacy and representativeness of development parties to engage as well as organizing potentially disparaging interests and goals.
- iv. Technical capacity, which highlights the qualitative and generic skills of trade unions. Expertise in negotiating skills is one such example, and which could be profoundly important for the success of development programmes, besides the design aspects of such programmes. Trade unions are rich in these assets.

The challenge of globalisation and informalisation is worldwide. The experience of trade unions, including dwindling number of members and the challenge of mobilizing workers in non-standard employment arrangements is also common. The typical response routes by trade unions to the challenges presented by globalisation have included:

- i. Aggressive organizing within the informal economy.
- ii. Mergers and consolidation of trade unions to leverage on size and structure.
- iii. Training (education) and capacity building for members in order to create awareness and enhance union consciousness, and in other circumstances, to develop skills.
- iv. Collaboration of strategic nature with employers for the purpose of saving jobs and whole industries.
- v. A general shift from a service model to an organizing model.
- vi. Twining unions intentionally. This involves greater identification and partnership with similar unions and relevant federations internationally. From this process, lessons can be learnt and solidarity built.
- vii. Lobbying national and local authorities in order to evolve favourable labour policies and laws.
- viii. Unions should also generally seek more encompassing agendas including those mapping around development and productivity in order to get a buy-in (even sympathy) from other critical stakeholders in society.

## **6. Setting an Agenda for a Programmatic Response of Trade Unions to the Challenge of Precarious Work**

The challenge of non-standard work and precarious work is considerable and requires innovative, remedial action which is premised on collaborative work at several levels. While trade unions can act significantly to mitigate the adverse effects of globalization and informalisation in the world of work, they also need to collaborate with other stakeholders and interests in society who exercise the levers of powers at different social fronts. For labour to be able to make further major and effective interventions with respect to precarious work, it would need to revise its repertoires and methods. This is an essential part of institutional development. It should start with a review of current methods and their value in relation to envisioned roles and objectives. This is a process all institutions need to undertake once in a while in order to remain focused and relevant. A comprehensive review of institutional repertoires of action should be at the ideational, strategic and practical levels. Such a process in the case of labour should proceed in this direction:



- i. Adoption of Pragmatic Approaches - In order to be effective in playing a development and policy role it would be important for labour to more regularly adopt pragmatic approaches to issues. This would entail a more thorough analysis of issues on their merits. It should also usually emphasize an understanding of the larger picture; studied, principled posturing rather than mere populism and obduracy.
- ii. A Focus on Common Interest - This would involve a move away from distributional to integrative dispositions in terms of bargaining style. It should generally be underlined by a willingness to make sacrifices and concessions, in addition to focussing on common interests - the things that 'unity' rather than those that 'divide'.
- iii. New Ways of Asserting Collective Identity - There is need for fresh ideas in terms of ways of asserting collective identity by trade unions. It might not be absolutely necessary to resort to mobilization and other oppositional tactic in order to be able to assert collective identity.
- iv. Using the Dialogue Option - A move away from collective action cast in the form of mobilization, should find dialogue and negotiate as a viable alternative. Apart from helping to avert the disruptions that go with the mobilization tactic, dialogue ensures that parties are able to build confidence and trust in each other, which is essential for development.
- v. Having a Planning Orientation - It should help the cause of labour as a development agent to emphasize a planning orientation. This should be visible in its appreciation of and application to relevant time horizons. It should also manifest in the crafting of plans and articulation of development models.
- vi. Building Institutional Capacity - It is needful for labour to possess institutional capacity in order to be able to contribute to the development discourse and policy related processes including those around precarious work. This should comprise technical skill and social clout necessary for effective participation in social policy making and the development process. It should also include an understanding of existing institutional spaces for making interventions and how to appropriate same.

The following union-specific actions are advised in respect to re-inventing union power and dealing with precarious work:

- i. Transformation of the business models of trade unions in a manner that ensures applicability in the informal sector. As a general rule, the unions should endeavour to make qualitative shift from a service model to an organizing model.
- ii. Trade unions should seek a working relationship with other worker-focused platforms such as cooperatives, at least in the short run while ultimate unionisation remains the major objective (in the long run). Within such collaborative arrangements, workers' interest could be hegemonized. Where the representative function is the emphasis, this should not be a problem for unions.
- iii. Social models by which unions are able to influence policies need to be constructed where they do not exist or optimized where they do. Worker -minded social and economic policies specifically addressing the informal sector could then have a good chance of emerging and succeeding. Union desks for researching and generating policies for the sector should be encouraged in addition to establishment of desks for lobbying authorities for the adoption of policies. In this regard, union legislative offices need to be encouraged.

- iv. Unions need to invest more in training and education of members. This would ensure that obsolescence which is one phenomenon that pushes many workers out of the formal sector is minimized if not totally eliminated. This way, workers will be capacitated, skill-wise, thereby raising their chance of survival in the formal sector.
- v. Unions should seek articulation of the definitional and jurisdiction issues around informal work and informal business in order to have a better handle on the nature and scope of the phenomenon in question, and devise effective strategies to deal with grey areas.
- vi. Unions should look out for ways of extending legal services to informal sector workers, particularly as it relates to the issue of contracts. This would ensure that the average worker in that sector understands what he is getting into and can seek lawful redress, in the case of violation of rights.
- vii. While canvassing for extension of safety net to workers in the informal economy, unions can on their own assist directly by helping workers organize and access existing financial and technical facilities, serving as guarantor where necessary in addition to developing other innovative ways of dealing with the challenge of collateralisation.
- viii. Unions should also focus on negotiating long term agreements that guarantee possibilities for firm productivity and members wage enhancement. The focus here should be on protecting existing jobs in the formal sector and preventing them from slipping into the informal sector.
- ix. As part of a planning orientation, unions need to develop social protection funds that enable them mitigate various contingencies among members, including loss of income while helping them with capacity through appropriate training.
- x. Unions should lead advocacy for programmes of industrial modernization and revival. This approach would, to a great extent, ensure better penetration of best practices in employment relations in each sector, leading to possible formalisation of informal employment relationships.
- xi. Advocacy of unions should also be in the area of reform of the institutional environment. In this respect, policies that discriminate against the informal economy could be addressed. Extension of protection services such as health care and pensions for informal sector workers could then be more easily realised.
- xii. Unions can expand their sphere of influence by encouraging a policy of wage growth in line with productivity increases, in a manner that meets the interest of workers and other stakeholders in the employment relationship such as employers ; thereby making the extension of collective bargaining a more acceptable prospect for businesses in the informal economy.
- xiii. Governments should be encouraged to evolve employment policies that emphasize job creation and full employment in order to be able to control the fiscal space and so better guarantee decent jobs and labour friendly human resource policies and practices.
- xiv. Union should collaborate with the relevant authorities and agencies to ensure labour standards are respected in all sites of employment. Enforcement is a critical element and informal business should not be off limits to enforcement of labour standards. Unions and the relevant organs of national authorities and governments such as the Ministries of Labour can collaborate on this point. Union can be very useful when it comes to providing information.

## 7. Conclusion

The assumption that the global economy has completely eclipsed trade unions and that unions are not relevant in the context of a globalized economy should be contested. Although the debilitating effects on union are obvious, it is reasonable to argue that a change in the approach to unions' business models or mode of operation can result in union effectiveness. Unionism is not a zero-sum game neither does it begin and end in mobilization. Unions must seek more encompassing roles and nodes of engagement in the interest of workers and their members. It is important that joint action with other labour stakeholders be encouraged by the unions. In this regard, union should seek to engage other stakeholders and optimize already existing platforms, particularly those emphasizing tripartism.

There needs to be a revitalizing around the matter of workers' representation. There is a sense in positing that the existence of strong workers' groups in every work context could significantly check rampant abuses under globalization and reinforce any procedures for the regulation of labour relations. The challenge of abuse of workers' right under globalisation is not just on the side of corporations and private capital; it also involves national authorities who encourage race to the bottom for economic advantage.

This issue that has been aptly cast as the need for closing the representational gap (Webster, 2008). Representation would ensure effectively reading of the limits and possibilities within employment relationships and contestations, thereby guiding negotiations and agreements to forge around the realities of such milieu.

Such worker groups clearly need to be strong and well organized internally and linked internationally. The same would need to be rooted at the workplace and in the community and have clear understanding of the different sources of power (besides the traditions ones), reflect on and apply same for their causes.

As expressed earlier, better organisation of unions can impact on the disposition of states. This is important to the extent that the strengthening of the state is critical to final outcomes. As Webster *et al* (2008) have argued, the state has not disappeared under globalisation but simply become captive. Reiger and Leibfried (1998) support this view, noting that states have not just been victims but actual promoters of the current trajectory through social policy. Social policy would therefore need to be a point of engagement, and the issue of precarious work could serve as an opening gambit for trade unions.

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